

In the Matter of FRIDAY HARBOR CANNING COMPANY, A CORPORATION
and CANNERY WORKERS UNION LOCAL 20754, A. F. of L.

Case No. R-1535.—Decided October 11, 1939

Salmon Canning Industry—Investigation of Representatives: controversy concerning representation of employees: employer's refusal to grant recognition of Union; contract for members only, no bar to—*Unit Appropriate for Collective Bargaining:* all employees engaged in handling, processing, and canning fish, including those engaged in the warehousing of the finished product, but excluding executives, office employees, supervisory officials, tenders, and machinists—*Election Ordered*

Mr. Patrick H. Walker, for the Board.

Mr. Sam R. Buck, of Friday Harbor, Wash., for the Company.

Mr. L. Presley Gill, of Seattle, Wash., for Local 20754.

Mr. Guilford Moe, of Bellingham, Wash., for the I. A. M.

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On July 1, 1939, Cannery Workers and Farm Laborers Union, Local 20754,¹ herein called Local 20754, filed with the Regional Director for the Nineteenth Region (Seattle, Washington) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Friday Harbor Canning Company, Friday Harbor, Washington, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 9, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

¹ Incorrectly designated Cannery Workers Union Local 20754, A. F. of L., in the formal papers. This was corrected by motion at the hearing.

On August 22, 1939, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon Local 20754, and upon Cannery Workers Local No. 19, United Fishermen of the Pacific, herein called Local 19, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on August 31, 1939, at Friday Harbor, Washington, before William M. Hepburn, the Trial Examiner duly designated by the Board. The Board, the Company, and Local 20754 were represented by counsel and International Association of Machinists, herein called the I. A. M., a labor organization claiming to represent employees directly affected by the investigation, by its representative,² and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

Although Local 19 did not make a formal appearance in the proceedings, its secretary appeared as a witness and claimed that Local 19 represented a substantial number of the employees involved. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On September 18, 1939, Local 19 filed a Motion to Reopen Hearing. It is not necessary to consider this motion for by its terms it is to be disregarded in the event that the Board determines an election to be necessary. The Board so finds in Section VI, *infra*.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a Washington corporation engaged in the business of canning salmon. It maintains its plant in Friday Harbor, on San Juan Island, off the coast of Washington. All of the packing materials used by the Company are shipped to it by merchant vessels from the Pacific Coast. In 1938 the Company packed 38,000 cases of salmon, all of which were shipped to States other than Washington and to foreign countries.

II. THE ORGANIZATIONS INVOLVED

Cannery Workers and Farm Laborers Union, Local 20754, is a labor organization affiliated with the American Federation of Labor. It admits to membership all employees of the Company engaged in

² The I. A. M. did not formally intervene in the proceedings.

handling, processing, and canning fish, including those engaged in the warehousing of the finished product, but excluding executives, office employees, supervisory officials, tenders, and machinists.

International Association of Machinists, Local 239, is a labor organization affiliated with the American Federation of Labor. It admits to membership machinists employed by the Company.

Cannery Workers Local 19 of the United Fishermen of the Pacific is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership the same classes of employees of the Company as Local 20754.

III. THE QUESTION CONCERNING REPRESENTATION

On July 19, 1938, Local 20754 and Local 19 entered into a contract with the Company on behalf of their members in the Company's plant. The contract was to expire on May 1, 1939, with the further provision that it would remain in effect thereafter unless any one of the parties thereto by 30 days' notice should advise the other of a desire to terminate it. No such notice was given.

In the latter part of June 1939, Local 20754, claiming to represent a majority of the employees, requested the Company to bargain with it as the exclusive representative of the employees. The Company denied this request and stated that the afore-mentioned contract was in force and that it would not bargain with Local 20754 or Local 19 unless and until one or the other was certified by the Board as the exclusive representative of its employees. In view of the filing of the petition herein, and in view of the fact that the contract recognized Local 20754 and Local 19 as representatives of their members only, the Board is not precluded from investigating or certifying bargaining representatives for the purposes of collective bargaining.³

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

³ See *Matter of National Can Co. and Steel Workers Organizing Committee Lodge No. 1679*, 13 N. L. R. B. 1242.

V. THE APPROPRIATE UNIT

Local 20754 urges that all the employees of the Company engaged in handling, processing, and canning fish, including those engaged in the warehousing of the finished product, but excluding executives, office employees, supervisory officials, tenders, and machinists, constitute a unit appropriate for the purposes of collective bargaining. The Company has no objection to this unit.

The I. A. M. urges that the machinists be excluded from the unit and introduced in evidence a contract with the Company covering these employees. There was also evidence that the tenders were covered by a separate contract between the Company and a labor organization.

We find that all the employees of the Company engaged in handling, processing, and canning fish, including those engaged in the warehousing of the finished product, but excluding executives, office employees, supervisory officials, tenders, and machinists, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VI. THE DETERMINATION OF REPRESENTATIVES

The Company introduced in evidence its pay roll for the 1937 and 1938 seasons containing the names of 221 employees in the appropriate unit. In support of its claim for certification, Local 20754 offered evidence which tended to show that it represents a majority of the employees in the appropriate unit. For the reasons stated in *Matter of Armour & Company*⁴ and *Matter of The Cudahy Packing Company*,⁵ however, we find that the question concerning representation can best be resolved by means of an election by secret ballot. The membership agreement which Local 19 has with the Company as well as the testimony of the secretary of that labor organization show that Local 19 represents a substantial number of the employees in the appropriate unit. We shall therefore accord it a place on the ballot.

As stated above, the Company introduced in evidence its pay roll for the 1937 and 1938 seasons. Local 20754 requests that in the event an election is directed, the employees on the pay roll for the 1938 season and those employees on the 1939 pay roll whose names do not appear on the 1938 pay roll be deemed eligible to participate

⁴ *Matter of Armour & Company and United Packinghouse Workers, Local Industrial Union No. 13 of Packinghouse Workers Organizing Committee, affiliated with C. I. O.*, 13 N. L. R. B. 567.

⁵ *Matter of The Cudahy Packing Company and United Packinghouse Workers of America, Local No. 21, of the Packinghouse Workers Organizing Committee, affiliated with the Congress of Industrial Organizations*, 13 N. L. R. B. 526.

therein. There appears to be no reason, however, why the pay roll of the current season should not be used to determine the eligibility of employees to participate in the election and we shall adopt it for the purposes of the election.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Friday Harbor Canning Company, Friday Harbor, Washington, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Company engaged in handling, processing, and canning fish, including those engaged in the warehousing of the finished product, but excluding executives, office employees, supervisory officials, tenders, and machinists, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Friday Harbor Canning Company, Friday Harbor, Washington, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Nineteenth Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among all the employees of the Company engaged in handling, processing, and canning fish, who are or have been employed during the current 1939 season, including those engaged in the warehousing of the finished product and employees who have since been temporarily laid off, but excluding executives, office employees, supervisory officials, tenders, machinists, and employees who have since quit or been discharged for cause, to determine whether they desire to be represented by Cannery Workers and Farm Laborers Union, Local 20754, affiliated with the American Federation of Labor, or by Cannery Workers Local 19 of the United Fishermen of the Pacific, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.